

**DECISION ON CHAPTER 40B COMPREHENSIVE PERMIT APPLICATION
JFK CROSSING
BOARD OF APPEALS CASE NO. 2016-0041**

RECEIVED
TOWN OF BROOKLINE
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2017 FEB -6 A 9:39

Date: February 3, 2017

Re: Application of 420 HARVARD ASSOCIATES LLC for a Comprehensive Permit

Location: Assessor's Atlas Map Sheet 15, Block 077, Lot 11-12, known and numbered as 420 Harvard Street, Brookline, Massachusetts; and Assessor's Atlas Map Sheet 15, Block 077, Lot 09, known and numbered as 49 Coolidge Street, Brookline, Massachusetts

PROCEDURAL HISTORY

1. On May 17, 2016, Massachusetts Housing Partnership ("MHP") issued a Project Eligibility Letter ("PEL") to 420 Harvard Associates LLC (the "Applicant").
2. On May 31, 2016, the Applicant applied for a Comprehensive Permit, pursuant to G.L. Chapter 40B, Sections 20-23 (the "Act"), to construct thirty-six (36) units of rental housing, 2,785 square feet of office space, and thirty-five (35) parking spaces (the "Original Project") on approximately 10,851 square feet located at the corner of Harvard and Fuller Streets in Brookline, Massachusetts (the "Original Site").
3. On October 19, 2016, the Applicant submitted a revised Comprehensive Permit Application (the "Application") to the Town of Brookline (the "Town") to construct twenty-five (25) units of rental housing, approximately 5,000 square feet of retail and office space, and twenty-seven (27) parking spaces configured between two buildings (the "Project") on two separate, abutting parcels located at 49 Coolidge Street and 420 Harvard Street totaling approximately 13,956 square feet of land area (the "Site"). The Application consists of twenty-three rental housing units at 420 Harvard Street served by nineteen underground parking spaces and a total of 4,100 square feet of retail and office space at 420 Harvard Street served by four underground parking spaces; and two rental housing units and 700 square feet of office space served by four tandem, driveway parking spaces at 49 Coolidge Street.
4. The materials submitted by the Applicant in its application and during the public hearing include:

Comprehensive Permit Application

Comprehensive Permit Plans for JFK Crossing dated May 3, 2016, and revised to December 12, 2016, prepared as follows:

Sheet Numbers and Titles

Site Plans dated May 19, 2016, revised to December 9, 2016, prepared by McKenzie Engineering Group, Inc., stamped by professional land surveyor Bradley McKenzie.

Sheet EX-1 – Existing Conditions Plan including street trees, grading, and utilities

Sheet C-1 – Site Feasibility Plan including street trees, grading, utilities, and site of proposed infiltration system.

[“Site Plans”]

Architectural Plans dated May 3, 2016 revised to December 12, 2016, prepared by Embarc Studio stamped by registered architect Dartagnan Brown.

Sheet A001	Cover
Sheet A100	Ground Floor Plan
Sheet A101	Garage Level
Sheet A101L	Landscape Plan
[No Sheet A103]	
Sheet A102	Floor Plan Levels 2 and 3
Sheet A104	Floor Plan Level 4
Sheet A105	Penthouse Floor Plan
Sheet A106	Roof Plan
Sheet A107	49 Coolidge Proposed Plans [floor plans]
Sheet A200	Site Sections
Sheet A201	Exterior Elevations [Harvard Street and Fuller Street]
Sheet A202	Exterior Elevations [South and West]
Sheet A203	Fuller Street Ramp
Sheet A300	Street View – Harvard and Fuller
[No Sheet A300A]	
Sheet A300B	Exterior Perspective Revision
Sheet A300C	Street View – Rendering
Sheet A301	Street View – Harvard Street
[No Sheet A301A]	
Sheet A301B	Harvard Street View – Revision
Sheet A301C	Street View Rendering
[No Sheet A302]	
Sheet A303	Façade Elements
Sheet A400	Aerial Perspectives
Sheet A401	Fuller Street Perspectives
Sheet A402A	View from Coolidge Street
Sheet A402B	Coolidge Street Perspective
Sheet A403A	View from Coolidge Street
Sheet A403B	Coolidge Street Perspective
Sheet A500	Shadow Studies – Summer Solstice
Sheet A501	Shadow Studies – Fall/Spring Equinox
Sheet A502	Shadow Studies – Winter Solstice
[Unnumbered]	unit mix, affordable units, living area and common area square footage

[“Architectural Plans”]

Landscape plan dated December 12, 2016 and prepared by Blair Hines Design Associates, landscape architects

Sheet A101L Landscape Plan

[“Landscape Plans”]

Traffic Impact Assessment dated May 25, 2016, amended August 20, 2016 with additional data provided September 26, 2016, and October 14, 2016, prepared by Vanasse & Associates, Scott W. Thornton, P.E., and Derek Roach, EIT.

5. The Applicant submitted a request for waivers from local by-laws and regulations and Waiver-Key site plan dated November 30, 2016 and amended December 9, 2016.
6. The Brookline Zoning Board of Appeals (the "Board" or the "ZBA"), with the consent of the Applicant, opened a duly advertised public hearing on June 27, 2016. The Board continued the hearing and heard and/or deliberated on testimony on the following dates: July 25, 2016, August 30, 2016, September 13, 2016, September 26, 2016, October 19, 2016, November 2, 2016, November 22, 2016 (continued), November 30, 2016, December 12, 2016, December 28, 2016. All continuances beyond 180 days from June 27, 2016 were with the Applicant's written consent.
7. The Board conducted a duly noticed site visit on July 6, 2016.
8. On December 28, 2016 the Board closed the public hearing.
9. The Board deliberated on the Application at a public meeting held on January 23, 2017 and voted to grant a Comprehensive Permit subject to the conditions listed below.
10. As required by the Act, the Board notified all applicable local boards and commissions of the filing of the Application by sending a copy thereof to such local boards and commissions for their recommendations, all of which have been made a part of the record of these proceedings and have been taken into consideration by the Board in rendering its Decision.
11. During the course of the public hearing, the Town staff, boards, commissions, and local residents submitted oral and written testimony with respect to the Project. The Board considered in part the technical review of Town department heads, an independent site and building design peer reviewer, and an independent traffic peer reviewer in regard to matters of public health and safety, environmental health and safety, traffic, site and building design, preliminary stormwater management plans, and other issues of local concern.
12. The following consultants and independent peer reviewers assisted the Board in its review of the application:
 - Engineering and Traffic
James Fitzgerald, P.E.
Environmental Partners Group, Inc.
Quincy, Massachusetts
 - Site and Building Design
Clifford Boehmer, AIA, President
Davis Square Architects
Somerville, Massachusetts
 - MassHousing Partnership Fund
Chapter 40B Advisor
Judi Barrett, Director of Municipal Services
RKG Associates
Boston, Massachusetts
13. During the course of the public hearing, Town staff and boards, peer reviewers, and local residents submitted extensive oral and written testimony with respect to the Original Project and the Project on issues of height, scale, feasibility of the parking plan, safety, traffic, and site circulation.

FINDINGS

1. According to the Commonwealth's Department of Housing and Community Development Subsidized Housing Inventory ("SHI"), as defined in 760 CMR 56.02, as of May 31, 2016, eight-and-sixth-tenths percent (8.6 %) of the Town's total housing stock constituted SHI-eligible housing, as defined in 760 CMR 56.02.
2. The Town has an ongoing, active program of promoting: low- and moderate-income housing, including inclusionary zoning; financial and technical assistance to non- and for-profit property owners and developers; technical and financial assistance to those seeking to purchase, rent and rehabilitate affordable homes; and other Chapter 40B affordable housing developments.
3. MHP determined that the Original Project was eligible under the New England Fund housing subsidy program, and at least twenty-five percent (25%) of the units would be available to households earning at or below eighty percent (80%) of the Area Median Income ("AMI"), adjusted for household size, as published by the U.S. Department of Housing and Urban Development.
4. On October 19, 2016, the Applicant submitted the Project, which proposes that at least twenty percent (20%) of the units would be available to households earning at or below fifty percent (50%) of the AMI, adjusted for household size, as published by the U.S. Department of Housing and Urban and Development.
5. The Site consists of two separate, abutting lots within different zoning districts as defined in the Brookline Zoning By-Law amended June 2, 2014. The lot at 420 Harvard Street is zoned as L-1.0 (local business district); the lot at 49 Coolidge is zoned as T-5 (two-family district).
6. The Site is located on Harvard Street. Harvard Street extends from the Boston-Brookline municipal line to the area known as Brookline Village and consists in part of commercial structures that are mostly one-story tall. The Site extends into a two-family district, which includes single- and two-family structures and three-story apartment buildings and row-houses.
7. The Site currently features two structures: a single-family dwelling and driveway at 49 Coolidge Street, and a two-and-a-half (2.5) story structure at 420 Harvard Street with ground floor office space and four residential units on the second floor and with nine (9) surface parking spaces accessed by a 44 foot curb cut off Fuller Street.
8. On October 14, 2015, the Brookline Preservation Commission (the "Preservation Commission") reviewed the Applicant's demolition review application for the structure at 420 Harvard Street and issued a Certificate of Non-Significance pursuant to the Town Demolition By-Law Section 5.3 that indicates the structure is not historically or architecturally significant and may be demolished.
9. The Planning Board, independent design peer reviewer Clifford Boehmer, and local residents expressed in written and oral comments during the public hearing that: the Original Project was too massive; its site configuration and parking infeasible; the architectural style and building typology of the six-story apartment structure was incongruous with the prevailing style of small-scale commercial properties on Harvard Street; and that the Original Project had inadequate setbacks to the abutting single- and two-family homes.
10. In August through November 2016, the Applicant met several times with immediate abutters to propose and refine conceptual plans to address the height, massing, density, setbacks and parking plan

on the Site.

11. At the August 10, 2016 public hearing the Applicant presented and formally submitted a conceptual plan for the Project that included the abutting lot and structure at 49 Coolidge Street, reduced the height by one story, relocated the parking spaces underground, eliminated the parking stacker system, and moved two (2) of the thirty-six (36) units from the proposed Harvard Street structure to the structure at 49 Coolidge Street.
12. On August 12, 2016, the Applicant submitted a copy of the Purchase and Sale Agreement dated August 13, 2016 (the "PSA") to demonstrate site control over 49 Coolidge Street.
13. On September 6, 2016, David Hanifin, Senior Loan Officer, MHP, submitted an e-mail to Planning Director Alison C. Steinfeld to confirm that the Applicant submitted the August 10, 2016 plans and the August 13, 2016 PSA to MHP and to state that site control is a matter solely within the purview of the Subsidizing Agency. On December 28, 2016, Mr Hanifin submitted a letter re-affirming and updating the May 17, 2016 PEL based on the October 28, 2016 plans and specifically the two separate parcels that comprise the Project.
14. At the November 2, 2016 public hearing, the Applicant presented a formally amended plan, which included detailed architectural and landscaping plans, shadow studies and architectural renderings from an electronic 3D model and of which abutters at 44 Fuller Street and 45 Coolidge Street testified they were generally supportive. The Applicant revised the affordable housing program such that at least twenty percent (20%) of the units would be available to households earning at or below fifty percent (50%) of AMI, adjusted for household size, as published by the U.S. Department of Housing and Urban Development.
15. On November 30, 2016 and December 6, 2016, the Applicant submitted an amended request for waivers from local regulations.
16. Peter Ditto, Director of Engineering and Transportation, submitted a letter to the ZBA dated November 30, 2016, providing that the Fuller Street driveway as designed on the October 28, 2016 plans, in conjunction with his recommendations to the Board, presents no safety hazard to pedestrians.
17. The waiver requests for the Project were based on the Site consisting of two separate parcels and not one merged parcel.
18. At the November 30, 2016 public hearing, the Applicant testified that the Project's two parcels would be placed in common ownership after a Building Permit is issued.
19. Placing the lots in common ownership does not automatically eliminate the lot line shared by the two parcels. In addition, the two distinct zoning districts (delineated by the shared lot line) will remain whether or not the lot line is eliminated. Eliminating the lot line would trigger new non-compliance with zoning and make other waiver requests non-applicable. Because the two zoning districts will remain, the Applicant has confirmed that he shall retain the shared lot line after the parcels are placed in common ownership.
20. The Applicant has stated that retail space will not be used for food preparation or production requiring cooking or venting.

21. The Applicant stated that parking on the Site will not be provided to customers of the commercial spaces.
22. Both the preliminary trash plan reviewed by and the accompanying conditions recommended by the Director of Environmental Health assume that no foods except coffee and tea will be prepared on the Site.
23. The Board heard the concerns of Town staff, boards, commissions, and residents and weighed them against local needs. The Board finds that the Project, as conditioned below, is Consistent with Local Needs, as that term is defined in 760 CMR 56.02, as required by the Act.
24. The Board finds that the conditions imposed in this Decision are necessary in order to address Local Concerns, as that term is defined in 760 CMR 56.02. The Board finds that such conditions will not render the Project uneconomic. To the extent that such conditions may render the Project uneconomic, the Board finds that the Local Concerns outweigh the potential benefits of the proposed affordable units.
25. The Board finds that granting certain waivers from local bylaws and regulations is acceptable even though granting any waivers may have an adverse impact on Local Concerns. Nevertheless, the Board finds that the Local Concerns affected thereby do not outweigh the regional need for affordable housing, especially given the changes the Applicant has agreed to make, specifically the redesign of the building and improvements to the site layout in direct response to concerns of the Board and other parties in interest.
26. The Board acknowledges concerns raised by abutters and other interested parties. The Board finds that despite these concerns, the Project addresses local and regional housing needs.
27. The Board finds that many of the concerns expressed by abutters and other interested parties during the public hearing process involve pre-existing conditions on Fuller, Coolidge, and Harvard Streets and the surrounding area that are not directly related to or caused by the Project.
28. The Applicant has had the opportunity to review the following Conditions and has no objections.

DECISION

Pursuant to the Act, the Board, after convening a public hearing and making findings of fact, grants a Comprehensive Permit to the Applicant for the construction of twenty-five (25) units of rental housing and no more than 5,000 square feet of commercial space, as shown on the Site Plans, Architectural Plans, and Landscape Plans, subject to all of the conditions listed below.

CONDITIONS

1. The Project shall include no more than twenty-five (25) units of rental housing in no more than two (2) buildings, which buildings are shown on the Site Plans and the Architectural Plans, with no more than twenty-three (23) rental housing units and approximately 5,000 square feet of retail and office space in the apartment building at the 420 Harvard Street lot and no more than two (2) rental housing units and approximately seven hundred (700) square feet of office space in the structure at the 49 Coolidge Street lot, and no fewer than twenty-three (23) underground parking spaces spanning both lots and no more than four (4) tandem driveway parking spaces at the 49 Coolidge Street lot as shown on the parking layout plan on Sheet A101 listed under Item 4 under Procedural History.

2. Parking shall not be provided to customers visiting the commercial space.
3. Parking spaces shall not be provided to off-site residents or businesses.
4. Professional kitchens requiring ventilation per the State Building Code shall not be permitted on the Site.
5. Parking at the 49 Coolidge Street parcel shall be used solely by the employees of the commercial space tenants.
6. The open space on the Site shall be used for passive use solely by the residents of the Project and the employees of the commercial space tenants of the Project.
7. Twenty (20) percent of the units shall be available to households earning at or below fifty (50) percent of the AMI, adjusted for household size, as published by the U.S. Department of Housing and Urban Development.
8. The total maximum number of bedrooms shall be forty-six (46) and the maximum number of units shall be as listed in the following table.

Unit Type	Number of Units	Total Bedrooms per Unit Type
420 Harvard		
Studio	3	3
One Bedroom	6	6
Two Bedroom	10	20
Three-Bedroom	4	12
49 Coolidge		
Two Bedroom	1	2
Three Bedroom	1	3
TOTAL 46 Bedrooms		

9. With respect to the Applicant's request for waivers from local by-laws and regulations dated December 12, 2016, the Board approves those waivers listed in Exhibit 1. The Project must comply with by-laws and regulations not waived.
10. Prior to the issuance of a Building Permit, the Applicant shall submit final floor plans and elevations for the buildings, indicating façade design and rooftop details subject to the review and approval of the Assistant Director for Regulatory Planning for consistency with the plans listed under Item 4 under Procedural History. Color, windows, and materials shall be reviewed and approved on Site by the Assistant Director for Regulatory Planning within a reasonable timeframe.
11. Prior to the issuance of a Building Permit, the Applicant shall submit final site and landscaping plans indicating: plant types and sizes and an adequate plan for maintaining, and replacing as necessary, the plantings on the Site; location of, height of, and materials for fences, walls, and patios; exterior lighting; location of utilities, mechanicals, parking spaces, and bicycle storage; location of trash, recycling, and snow storage, subject to the review and approval of the Assistant Director for Regulatory Planning.

12. Prior to the issuance of a Building Permit, the Applicant shall submit a lighting plan to the Director of Engineering and Transportation and the Building Commissioner for review and approval. All exterior lighting on the Site shall be installed and maintained so that no direct light or glare shines on any street or any nearby homes and headlight glare from vehicles entering or leaving the Site or parking on the Site shall be shielded in accordance with local by-laws.
13. Prior to Commencement of Construction, the Applicant shall meet with the Town Arborist to review the health of the existing street trees and provide a plan for protecting existing street trees during construction, and planting additional street trees, for the review and approval by the Town Arborist and with all costs borne by the Applicant. Any proposed removal of street trees shall be subject to M.G.L. c.87, the "Shade Tree Act."
14. Prior to the issuance of a Building Permit, the Applicant shall submit a stormwater management and drainage plan to the Director of Transportation and Engineering for review and approval.
15. Traffic mitigation shall be as follows:
 - (a) The Applicant, in consultation with the Director of Engineering and Transportation, shall install a NO PARKING THIS SIDE sign on the southwest-bound side of Fuller Street between Fuller-Harvard Street intersection and the driveway entrance, with all costs related to performance thereunder borne by the Applicant.
 - (b) The Applicant shall contribute \$10,000 to the final cost to install an audible pedestrian signal at the traffic signal located at the Harvard Street and Fuller Street intersection. Prior to the issuance of a Building Permit, the Applicant shall provide \$10,000 to the Town for deposit into a segregated Town account to be used by the Town for the signal upgrade. If the funds are not used within three (3) years from the date of deposit for the installation of an audible pedestrian signal at the traffic signal located at Harvard Street and Fuller Street intersection, the funds shall be returned to the Applicant.
 - (c) The Applicant shall ensure that the Fuller Street driveway apron is at the same level as the sidewalk elevation and that the material for the driveway apron is the same as that of the sidewalk.
 - (d) The Applicant shall install both visual and audible signals on the Site at the Fuller Street driveway exit to alert pedestrians of exiting vehicles.
 - (e) The Applicant shall install mirrors on the Project's structure at 420 Harvard Street to assist drivers exiting the Fuller Street driveway.
 - (f) The Applicant, in consultation with the Director of Engineering and Transportation, shall install a STOP sign and a stop line consisting of concrete pavers at the Site's Fuller Street driveway exit with all costs borne by the Applicant.
16. Prior to the issuance of a Building Permit, the Applicant shall submit a rubbish/recycling plan and schedule to the Chief of Environmental Health for review and a determination of compliance with Town regulations. Said plan shall include provisions guaranteeing that:
 - (a) all rubbish generated from the Project's housing units, retail space, and office space at 420 Harvard Street shall be handled and disposed of once weekly by a private waste management services provider contracted by the Applicant in compliance with all applicable regulations;
 - (b) all recycling generated from the Project's housing units, retail space, and office space at 420

Harvard Street shall be handled and disposed of once weekly by a private waste management service contracted by the Applicant in compliance with all applicable regulations;

- (c) a total of eight 96-gallon receptacles for rubbish and recycling shall be provided for residential units and located in the trash room;
- (d) a total of four 96-gallon receptacles for rubbish and recycling shall be provided for commercial tenants and located in the trash room;
- (e) the schedule for the property owner's rubbish and recycling pick-up demonstrating compliance with Town by-laws;
- (f) rubbish receptacles and recycling containers shall not be stored in the public way on Harvard and/or Fuller Streets at any time;
- (g) rubbish and recycling receptacles shall not be stored in the loading bay in the Fuller Street front yard between 8 AM and 11 PM on weekdays and weekends;
- (h) all rubbish and recycling generated by the housing units and office unit at 49 Coolidge Street shall be picked up and disposed of by the Town of Brookline.
- (i) Rubbish produced by commercial tenants and rubbish produced by residential tenants shall be stored in separate receptacles;
- (j) the Applicant shall inform the Public Health Department when the Project's residential units are ninety (90) percent occupied so that the Chief of Environmental Health may review and approve the preliminary rubbish/recycling plan for compliance with this Decision;
- (k) no foods shall be prepared within the commercial space except coffee and/or tea. Prospective retail tenants selling coffee and/or tea shall be subject to local licensing and other approvals relative to the sale of food and beverages as required by local authorities. Additional reviews by municipal departments and boards shall occur at that time.

- 17. The loading zone in the Fuller Street front yard shall be striped.
- 18. Plantings between the property line at 44 Fuller Street and the Site's driveway shall be no higher than three (3) feet for the first six (6) feet of the Fuller Street front yard for optimal driver visibility.
- 19. Prior to the issuance of a Building Permit, the Applicant shall submit a construction management plan, consistent with the requirements listed in Condition 54, to the Building Commissioner and the Director of Engineering and Transportation for review and approval.
- 20. Prior to the issuance of a Building Permit, for each building on the Site or a portion thereof, the Applicant shall comply with the Public Works Department's Site Plan Review Checklist and with the Building Department's Certificate of Occupancy Process as verified by the review and approval of the Director of Engineering and Transportation and the Building Commissioner.
- 21. Prior to the issuance of the final Certificate of Occupancy for the Project, the Applicant's registered architect and professional engineer shall certify in writing to the Building Commissioner that the Project complies with the Site Plans and the Architectural Plans, including the modifications required by this Decision.

22. Prior to Commencement of Construction, the Applicant shall provide the Director of Engineering and Transportation with plans showing that no erosion from the Site will cause deposition of soil or sediment upon adjacent properties or public ways. For purposes of this Decision, "Commencement of Construction" shall mean: the initial disturbance of soils associated with clearing, grading, or excavating activities or other construction activities; the placement of or mobilization for construction activities including but not limited to placing materials, machinery, supplies or construction equipment on the Site and removal or disconnection of utilities or water or sewer lines; or any alteration, demolition, repair or improvements to a building or structure.
23. Prior to the issuance of the first Certificate of Occupancy, the Applicant shall submit as-built plans certified by a registered architect to the Building Commissioner for his review and determination of conformance with the approved plans and the Conditions of the Decision.
24. During construction and initial leasing, the Applicant may post on Site no more than one (1) temporary sign for the Project, no greater than twenty square feet (20 sf), with the design and location subject to review and approval by the Assistant Director for Regulatory Planning.
25. After the issuance of the final Certificate of Occupancy and before the Applicant replaces or changes any exterior materials, the Applicant shall submit plans showing replacement materials, colors, and window profiles for the review and approval of the Assistant Director for Regulatory Planning (if they are other than those indicated on the plans listed Conditions 10 and 11), unless the changes are deemed substantial by the Subsidizing Agency pursuant to 760 CMR 56.04(5).
26. After the issuance of a Building Permit, the Applicant shall submit to the Director of Planning and Community Development or her designee proof that the lots at 420 Harvard Street and 49 Coolidge Street are in common ownership.
27. The two lots shall remain in common ownership in perpetuity. The two lots shall remain as separate lots in perpetuity consistent with the waivers granted by the Board.
28. When fifty (50) percent of the Certificates of Occupancy are issued, the Applicant shall demonstrate to the Building Commissioner that the Project complies with the Town Noise By-Law. Prior to the issuance of the final Certificate of Occupancy, the Applicant shall demonstrate to the Building Commissioner that the Project complies with the Town Noise By-Law.
29. Prior to the Commencement of Construction, the Applicant shall provide proof that utility companies shall permit existing utilities that cross the lots at 420 Harvard Street and 49 Coolidge Street to be eliminated or relocated underground and that the Town shall not be financially responsible for the relocation of said utilities underground.
30. Prior to the issuance of demolition permit, the Applicant shall conduct a pre-construction survey of the above and below grade structures located at 428 Harvard Street, 45 Coolidge Street, and 44 Fuller Street, subject to receipt from abutters of rights of access. Any damage to structures within this area due to construction of the Project shall be the financial responsibility of the Applicant to repair.
31. There shall be no blasting during the construction of the Project.
32. Contemporaneously with sending or within ten (10) days of receiving any and all correspondence to or from the Massachusetts Historical Commission or the Massachusetts Secretary of Energy &

Environmental Affairs concerning the Project, the Applicant shall provide the Board and the Brookline Preservation Commission with copies.

33. Prior to the issuance of a Building Permit, the Applicant shall submit a Transportation Access Plan ("TAP") for reducing the number of vehicular trips to and from the Project, to be prepared in accordance with the Transportation Access Plan Guidelines of the Town (Sec. 5.09.3.c.6 of the Town Zoning By-law), and which shall be subject to the review and approval of the Director of Engineering and Transportation. Mitigation measures in the TAP shall include the Applicant (i) providing subsidies for its employees' public transit costs; (ii) providing on-site sale of MBTA passes; (iii) providing no fewer than thirty (30) racks for secure bicycle storage; (iv) publicizing transit options; and (v) including in leases for the commercial spaces language mandating MBTA pass subsidies be provided to employees by the tenants.

Housing

34. As a condition of any approval hereunder, at least twenty (20) percent of the units shall be and shall remain affordable and shall be marketed to eligible households whose annual income may not exceed 50% of AMI, adjusted for household size, as determined by the United States Department of Housing and Urban Development (the "Affordable Units"); and subject to approval by the Subsidizing Agency, as defined in 760 CMR 56.02, as the project administrator, the Affordable Units and the MarketRate units shall be eligible to be included in the Town's SHI.
35. The Affordable Units shall be dispersed throughout the Project and shall have the same bedroom "ratio" or "mix" as the Market Rate Units (as defined in Condition 46) in the Project, subject to the approval of the Subsidizing Agency. The specific units in the Project designated as the Affordable Units may change from time to time, provided that there shall be no fewer than five (5) units in the Project that are Affordable Units.
36. Affordable Units shall:
- a. Be evenly dispersed throughout the project
 - b. Be indistinguishable from the market rate units in external appearance
 - c. Have the same interior finishes as the market rate units
 - d. Contain the same square footage as the average size of the Project's market rate units containing the same number of bedrooms
37. All leases for the units in the Project shall include language stating that tenants may not use dens, living rooms, or dining rooms as bedrooms. Lease and occupancy agreements shall be for a term of not less than six (6) months. Nightly rentals shall not be permitted.
38. Prior to the issuance of a Certificate of Occupancy by the Building Commissioner, the Director of Planning and Community Development will review and approve the distribution of units between the Affordable and Market Rate Units to ensure that the floor plans and amenities of the Affordable Units relative to the Market Rate Units are consistent with the conditions of the Subsidizing Agency's approval of the Project.
39. Local Preference: The Applicant shall work with the Director of Community Development to request that no less than 70% of the affordable units be awarded to households with local preference during the initial lottery, as defined by the Town and subject to the approval of the Subsidizing Agency.

40. The Assistant Director for Community Planning must review the affirmative marketing plan for the Affordable Units before it is submitted to the Subsidizing Agency for final approval. The Assistant Director for Community Planning will work with the Applicant to market the Affordable Units, specifically identifying appropriate local outreach venues.
41. For the period in which the Project is being monitored by the Subsidizing Agency, upon the Town's request, the owner shall share all monitoring reports with the Assistant Director for Community Planning including annual rent increases and information verifying income eligibility for affordable units.
42. Five (5) units in the Project shall in perpetuity be Affordable Units. Prior to the issuance of any Building Permit, a Regulatory Agreement, which shall include monitoring provisions if such provisions are not provided in a separate Monitoring Services Agreement, shall be executed by both the Applicant and the Subsidizing Agency, in form and content as approved by the Subsidizing Agency as Subsidizing Agency, and recorded with the Registry of Deeds by the Applicant against the Property, provided, however, that if a lender or governmental funding agency for the Project requires the issuance of a Building Permit(s) prior to any construction loan closing, then the Building Permit(s) may be issued, subject to the Building Commissioner's satisfaction with compliance with all other applicable legal requirements for issuance, and released to the construction lender's closing attorney, who may then release them to the Applicant upon the execution and recording of the Regulatory Agreement. Such restrictions shall take priority over all financing documents related to the Project and shall survive foreclosure. The Applicant/Owner shall provide copies of monitoring reports to the Town. Moreover, a second Regulatory Agreement and a Monitoring Services Agreement (the terms to be included are provided in Exhibit 2) shall be prepared prior to expiration of the initial Regulatory Agreement, approved by Town Counsel, executed and recorded for the period after the expiration of the affordability restrictions imposed by the Subsidizing Agency. The Applicant shall enter into said Regulatory Agreement and Monitoring Services Agreement with the Town and the Monitoring Agent to continue such restrictions. Such agreement shall be consistent with the terms of this Decision and with the customary terms of Town's Regulatory Agreements.
43. The Applicant shall retain the Town or a consultant designated by the Town as the Monitoring Agent for the Project for the period commencing at the expiration of the affordability restrictions imposed by the Subsidizing Agency. All costs associated with monitoring for consistency with the Regulatory Agreement shall be borne by the Applicant.
44. Subject to the requirements of the Subsidizing Agency to monitor and enforce the provisions of the Subsidizing Agency Agreements (as defined in Exhibit 2, Terms To Be Included in Replacement Town Regulatory Agreement) relative to limited dividends from the Project during the Subsidy Period (as defined in Exhibit 2), the Applicant shall provide a copy to the Board of Selectmen of any and all certifications, statements, reports, appraisals, and notices, including but not limited to requests by the Applicant to the Subsidizing Agency to revalue the Applicant's equity in the Project, made by the Applicant to the Subsidizing Agency relative to the Applicant's compliance with the limited dividend provisions in the Subsidizing Agency Agreements (e.g. all statements required to be submitted to the Subsidizing Agency as set forth in the Subsidizing Agency's regulatory agreement), contemporaneously with the Applicant's delivery of such documents to the Subsidizing Agency. The

Applicant shall be bound by all terms contained in the Subsidizing Agency Agreements, including the terms pertaining to limited dividends and the use of development revenues.

45. The Town will not issue a Building Permit for the Project without review of final plans by the Assistant Director for Community Planning and final approval from the Subsidizing Agency.
46. No more than four (4) certificates of occupancy shall be issued by the Building Commissioner for units designated for rent at fair market rents (the "Market Rate Units") until at least one (1) certificate of occupancy is issued for an Affordable Unit. No more than sixteen (16) certificates of occupancy for Market Rate units shall be issued until at least four (4) occupancy permits for Affordable Units are issued.

Fire Safety

47. Prior to the issuance of a Building Permit, the Fire Chief or his designee shall review and approve the final site plan to ensure that fences and landscaping do not impede firefighter access to the lower windows in both buildings.
48. Prior to the application for a Building Permit, the Applicant shall certify in writing to the Fire Chief and the Building Commissioner that (a) both buildings have enhanced NFPA-13- (or latest version of the NFPA code) designed sprinkler systems and (b) both buildings in the Project have direct alarm notification to the Fire Department designed in accordance with the latest version of Building and Fire Codes.

Infrastructure

49. The following portions of the Project shall be and shall remain forever private and the Town shall not have, now or ever, any legal responsibility for their operation, maintenance, repair, or replacement:
 - (a) The on-site stormwater management system;
 - (b) All sewer, stormwater and water connections, lines and equipment required, from the public way to the buildings;
 - (c) All site utilities including domestic water, fire protection, gas if applicable, electric, telephone, and cable systems.
50. The Applicant shall operate and maintain all of the foregoing specified in Condition 49 in good working condition and repair at all times at its sole cost.
51. Prior to issuance of a Building Permit, all water, stormwater and sewage facility designs shall be subject to review and approval by the Director of Engineering and Transportation.

Pre-Building Permit Review

52. Prior to issuance of a Building Permit, the Applicant shall demonstrate to the satisfaction of the Building Commissioner that:
 - (a) Final site plans and architectural plans have been reviewed and approved by the Assistant Director for Regulatory Planning in accordance with Conditions 10 and 11.

- (b) The Director of Engineering and Transportation has reviewed and approved the final site and lighting plans in accordance with Conditions 12 and 20; the final stormwater management and drainage plans in accordance with Condition 14; the water, stormwater and sewage facility designs in accordance with Condition 51; the erosion control plans in accordance with Condition 22; the pavement surfaces in accordance with Condition 58; and all other items requiring review, verification, or approval by or to the satisfaction of the Director of Transportation and Engineering as listed in these Conditions.
- (c) It has paid all fees and funded all improvements required pursuant to Condition 15 and, if applicable, Condition 13.
- (d) It has initiated and participated in a pre-construction meeting to discuss the proposed construction schedule with its contractor and the Town, including but not limited to the Building Commissioner, Director of Transportation and Engineering, and the Fire Chief.
- (e) All required local, state and federal approvals and permits have been obtained and it has obtained Final Approval from the Subsidizing Agency as provided in 760 CMR 56.05(8)(c)(2) and (3).
- (f) The Building Commissioner has approved the Construction Management Plan (Condition 19).
- (g) The Chief of Environmental Health has reviewed and approved the rubbish and recycling plan in accordance with Condition 16.
- (h) The Subsidizing Agency has granted the Subsidy as provided in 760 CMR 56.05(8)(c)(1).
- (i) The Assistant Director for Community Planning has reviewed the final plans in accordance with Condition 45.
- (j) The Fire Chief or his designee has reviewed and approved the final site plan in accordance with Condition 47.
- (k) The Town Arborist has reviewed a plan to protect existing street trees or add new street trees in accordance with Condition 13.

Construction

- 53. During construction, the Applicant shall conform to all local, state, and federal laws regarding air quality, noise, vibration, dust, and blocking of any roads. The Applicant shall at all times use reasonable means to minimize inconvenience to residents and businesses in the general area. The Applicant shall provide the Police Department with the name and 24-hour telephone number for the project manager responsible for construction. The hours for operation of construction equipment, deliveries and personnel are limited to: Monday through Friday (excluding Federal and State holidays) from 7:00 am to 5:00 pm; and Saturday from 8:30 am to 5:00 pm. Any noise or traffic complaints during these hours will be investigated by the appropriate Town agencies and departments.
- 54. Prior to Commencement of Construction and subject to approval by the Building Commissioner, the Applicant shall provide a Construction Management Plan that shall include but not be limited to: designation of truck routes; a survey of existing trees on the Site and measures to ensure tree protection during construction; limit of work areas; where construction vehicles, materials and equipment will be stored; parking hours and locations for construction workers' vehicles; location of

portable toilets; rodent and insect control plan; dust/airborne particle control; security fencing; trash areas; construction trailer locations; the timetable for excavation and overall earthwork operation; and the number of necessary truck trips.

55. The Applicant shall make all commercially reasonable efforts to ensure that the entire construction period from Commencement of Construction to the date of issuance of the final Certificate of Occupancy shall be no more than thirty (30) months except subject to causes beyond the Applicant's reasonable control. Applicant may seek an extension of the foregoing requirement pursuant to 760 CMR 56.05(11).
56. The Applicant shall keep in optimum working order any and all construction equipment that makes sounds.
57. Upon the request of the Director of Engineering and Transportation and/or the Building Commissioner, the Applicant shall provide written reports during construction outlining the status of the Project.
58. Prior to Commencement of Construction, the Applicant shall provide the Director of Transportation and Engineering with a report and photographs of the condition of pavement surfaces along truck routes before Construction Commencement and then again prior to issuance of a Certificate of Occupancy to ensure construction traffic does not adversely affect the pavement.

General

59. The provisions of this Comprehensive Permit shall be binding upon the heirs, successors and assigns of the Applicant and the obligations shall run with the land.
60. Any reference to Town staff shall be read to include a designee (either other staff member(s) or a consultant) of that person or of the head of the respective Town department or division.
61. If any part of this Decision is for any reason held invalid or unenforceable, such invalidity or unenforceability shall not affect the validity of any other portion of this Decision.
62. Upon execution by the members of the Board, the Clerk of the Board is directed to file this Decision with the Town Clerk and send a copy to the Applicant by certified mail, return receipt requested.
63. Any person aggrieved by this Decision may appeal pursuant to M.G.L. c.40B, Sec. 21.
64. This Comprehensive Permit shall expire if construction is not commenced within three (3) years from the date this Decision becomes final as provided in 760 CMR 56.05(12)(c), subject to the tolling provisions of 760 CMR 56.05(12)(c). For purposes of this paragraph only, Commencement of Construction is defined as the construction of the foundation of at least one of the Project's buildings. The Applicant may apply to the Board for extensions of this Comprehensive Permit in accordance with 760 CMR 56.05(12)(c).
65. If the Applicant revises any of the Plans, it shall present the revised plans to the Board in accordance with 760 CMR 56.05(11).
66. This Comprehensive Permit may be transferred by the Applicant only upon compliance with the requirements of 760 CMR 56.05(12)(b).
67. All utilities shall be underground.

68. Applicant shall pay for the Town's cost of police and fire details for the Project, in accordance with the Town's standard practices.
69. All Conditions in this Decision are to be interpreted and enforced to the extent permitted by M.G.L. c.40B and the Regulations.
70. Prior to thirty (30) days subsequent to the end of all applicable appeal periods, the Applicant shall record this Decision in the Norfolk County Registry of Deeds and shall provide the Board and the Building Commissioner with a copy of this Decision endorsed with the applicable recording information.
71. There shall be no structures or buildings or paved surfaces on the Site other than those shown on the Site Plans. Notwithstanding the foregoing, insubstantial changes to the Project, as determined by the Board in accordance with 760 CMR 56.05(11), shall be allowed.
72. The height of the structure at 49 Coolidge Street, when renovated, shall be no higher than the height of the existing structure.

ATTACHED:


Exhibit 1 (Granted Waivers)

Exhibit 2 (Terms To Be Included in Replacement Town Regulatory Agreement)

Exhibit 3 (Public Hearing Notice – June 16, 2016 and June 23, 2016)

RECORD OF VOTE

The Board of Appeals voted unanimously to grant a Comprehensive Permit subject to the above-stated conditions:

 Jesse Geller, Chairman, Brookline Board of Appeals

Wherefore a Comprehensive Permit, consistent with the conditions of this Decision, is granted to the Applicant.

Filed with the Town Clerk on 2/6/2017.

ATTEST:

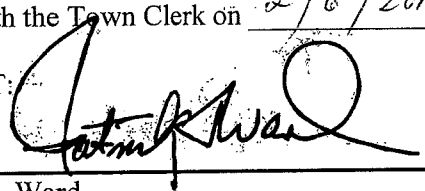

Patrick J. Ward
Clerk, Board of Appeals

Exhibit 1
PROPOSED WAIVER LIST
JFK CROSSING
(420 Harvard Street)
T-5 and L-1.0 Zoning Districts
Approved December 28, 2016

NOTES FROM BUILDING DEPARTMENT

1. The project consists of two abutting lots in different zoning districts. The 420 Harvard lot is in the L-1.0 district; the 49 Coolidge lot is in the T-5 district.
2. The waiver requests are based on two separate parcels not one merged parcel.
3. The project's two parcels will be placed in common ownership after a building permit is issued; it is recommended that the ZBA place a condition requesting proof of common ownership. (Subsidizing Agency has sole purview of site control.)
4. Placing the lots in common ownership does not automatically eliminate the lot line shared by the two parcels. In addition, the two distinct zoning districts will remain whether or not the lot line is eliminated. Eliminating the lot line would trigger new waivers and eliminate some of those in this list. Because the two zoning districts will remain, the Applicant has determined that is easier to retain the shared lot line after the parcels are placed in common ownership.
5. Dwelling units in L-1.0 districts must comply with the open space requirement specified for the M-1.0 district.
6. When a business district abuts a T-district, rear yard setback requirements under Zoning By-Law Section 5.73 apply.
7. The proposed plan for the T-5 lot falls under the category "Any other structure or principal use" in Zoning By-Law Table 5.01.
8. Because the project is a on a corner lot, the applicant may designate rear and side yards. This designation is indicated on the Waiver Key site plan, which accompanies this Waivers List.

Brookline By-Laws

Bylaw Section	Requirement	T-5 (49 Coolidge) Requested Waiver(s)	L-1.0 (420 Harvard) Requested Waiver(s)	Details of Proposal Requiring Waiver	Waiver Number
§3.02	Boundary of District	Waiver of special permit in gross floor area calculation under M.G.L. c.40B, rather than under §3.02.	Waiver of special permit in gross floor area calculation under M.G.L. c.40B, rather than under §3.02.	The Development is a multi-family housing and commercial development under M.G.L. c.40B, so the gross floor area calculation requirements are governed by the comprehensive permit.	0.1 pertains to Coolidge 0.2 pertains to Harvard A.1 A.2
§4.07 & Table 4.07	Automotive Service Uses	Waiver to allow residential and non- residential parking garage or parking area under M.G.L. c.40B, rather than under Table 4.07. Uses 22, 23	na	The Development is a multi-family housing and commercial development under M.G.L. c.40B, so the parking garage and parking area requirements are governed by the comprehensive permit.	C.1
§4.07 & Table 4.07	Retail and Consumer Uses	na	Waiver to allow retail and consumer uses under M.G.L. c.40B, rather than under Table §4.07. Uses 38C	The Development is a multi-family housing and commercial development under M.G.L. c.40B, so the retail and consumer use requirements are governed by the comprehensive permit. Under 5000 sf	D.2
§4.08	Affordable Housing Requirements	Waiver to allow affordable housing requirements under M.G.L. c.40B, rather than under §4.08.	Waiver to allow affordable housing requirements under M.G.L. c.40B, rather than under 4.08.	The Development is a multi-family housing and commercial development under M.G.L. c.40B, so the affordable housing	E.1 E.2

				requirements are governed by the comprehensive permit.	
§5.07	Dwelling in Business District	n/a	Waiver to allow usable open space, side and rear yard, and floor area ratio requirements under M.G.L. c.40B, rather than under 5.07.	The Development is a multi-family housing and commercial development under M.G.L. c.40B, so the dimensional and floor area ratio requirements are governed by the comprehensive permit.	F.2
§5.09	Design Review	Design Review requirements not applicable under M.G.L. c. 40B, except §5.09 3.c.2 – existing conditions plan; 3.c.3 – drawing of proposal; 4.f – storm water drainage; 4.g – utility service; 4.h – advertising features; 4.j – safety and security; 4.m – energy efficiency.	Design Review requirements not applicable under M.G.L. c. 40B, except §5.09 3.c.2 – existing conditions plan; 3.c.3 – drawing of proposal; 4.f – storm water drainage; 4.g – utility service; 4.h – advertising features; 4.j – safety and security; 4.m – energy efficiency.	Comprehensive Permit, as may be granted by Zoning Board of Appeals shall provide all local permits per M.G.L. c. 40B § 20-23.	G.1 G.2
§5.10 & Table 5.01	Minimum Lot Size	Waiver to allow minimum lot size requirements under M.G.L. c.40B, rather than under §5.10 & Table 5.01. (5,000 sf.)	n/a	The Development on 49 Coolidge Street is on a 3,105 sf. lot.	H.1
§5.12 & Table 5.01	Lot Area per Dwelling Unit	Waiver to allow lot area per dwelling unit calculation under M.G.L. c.40B, rather than under §5.12 & Table 5.01. (5,000 sf.)	n/a	The Development on 49 Coolidge Street will have 2 residential dwelling units and 1 commercial unit on a 3,105 sf. lot.	I.1

§5.13 & Table 5.01	Lot Width	Waiver to allow lot width requirement under M.G.L. c.40B, rather than under §5.13 & Table 5.01. (50 ft.)	n/a	The Development on 49 Coolidge Street has a lot width of 36 ft.	J.1
§5.20 §5.22 & Table 5.01	Floor Area Ratio	Waiver to allow floor area ratio requirement under M.G.L. c.40B, rather than under §5.20 & Table 5.01. (1.0)	Waiver to allow floor area ratio requirement under M.G.L. c.40B, rather than under §5.20 & Table 5.01. (1.0)	<p>The Development on 49 Coolidge Street is on a 3,105 sf. lot and will maintain an existing 4,608 sf. gross floor area, with a floor area ratio of approximately 1.48.</p> <p>The Development on 420 Harvard Street is on a 10,851 sf. lot will have 33,090 sf. gross floor area (excluding parking garage) with a floor area ratio of approximately 3.05.</p>	K.1 K.2
§5.30 §5.31 & Table 5.01	Maximum Height of Buildings	na	Waiver from maximum building height limitations under M.G.L. c.40B, rather than under §5.30 & Table 5.01. (40 ft.)	<p>The Development on 49 Coolidge Street will maintain the existing building height.</p> <p>The Development on 420 Harvard Street will have a maximum building height of 58 ft 3 in (58.23 ft)</p>	L.2
§5.44	Accessory Underground Structures	Waivers from setback requirement for underground structures	Waivers from setback requirement for underground structures	The Development at 420 Harvard will have underground garage below both Harvard and Coolidge lots. There will be parking above the structure on the Harvard lot.	M.1 M.2

§5.45	Traffic Visibility Across Corners	n/a	Waiver from 5.45	structure within the triangular plane, specified in Sec. 5.45, will be constructed at Harvard-Fuller corner	N.2
§5.50 §5.51 & Table 5.01	Front Yard Requirements	Waiver from minimum front yard requirements under M.G.L. c.40B, rather than under §5.50 & Table 5.01. (25 ft.)	Waiver from minimum front yard requirements under M.G.L. c.40B, rather than under §5.50 & Table 5.01. (10 ft.)	The Development on 49 Coolidge Street will maintain the existing front yard setback. The Development on 420 Harvard Street has front yard setbacks of 1.0 ft. on Harvard Street and 3.5 ft. on Fuller Street.	O.1 O.2
§5.60 & Table 5.01	Side Yard Requirements	Waiver from minimum side yard requirements under M.G.L. c.40B, rather than under §5.60 & Table 5.01. (20 ft.)	Waiver from minimum side yard requirements under M.G.L. c.40B, rather than under §5.60 & Table 5.01. (20+L/10 ft.)	The Development on 49 Coolidge Street will maintain the existing side yard setbacks. The Development on 420 Harvard Street has side yard setbacks of 1.0 ft. on Harvard Street and 3.5 ft. on Fuller Street.	Q.1 Q.2
§5.64	Side Yards for Non-Dwelling Uses in Business District				R.1 R.2
§5.70 & Table 5.01	Rear Yard Requirements	Waiver from minimum rear yard requirements under M.G.L. c.40B, rather than under §5.70 & Table 5.01. (40 ft.)	Waiver from minimum rear yard requirements under M.G.L. c.40B, rather than under §5.70 & Table 5.01. (10+L/10 ft.)	The Development on 49 Coolidge Street will maintain the existing rear yard setback above grade, and 0.0 ft. rear yard setback in the parking garage below grade. The Development on 420 Harvard Street will have a rear yard setback of 15 ft. to 44 Fuller Street above grade, and	S.1 S.2

					\$-0 0 ft. setback in the parking garage below grade.	
						T
§5.73	Rear Yards for Non-Dwelling Uses in Business District				<p>The Development on 49 Coolidge Street is on a 3,105 sf. lot and will maintain 1,405 sf. of landscaped open space including 1,040 sf. of hard surface areas, with a landscaped open space percentage of approximately 45%, and 74% hard surface areas.</p> <p>The Development on 420 Harvard Street is on a 10,851 sf. lot and will have 1,516 sf. of landscaped open space, including 1,045 sf. of hard surface areas, with a landscaped open space percentage of approximately 14%, and 69% hard surface areas.</p>	U.1 U.2
§2.15(3) §5.90 & Table 5.01	Minimum Landscaped Open Space	<p>Waiver from minimum landscaped open space requirements under M.G.L. c.40B, rather than under §2.15(3), §5.90 & Table 5.01.</p> <p>(Min 20% Landscaped Open Space)</p> <p>(Max 30% Hard Surface Area)</p>	<p>Waiver from minimum landscaped open space requirements under M.G.L. c.40B, rather than under §2.15(3), §5.90 & Table 5.01.</p> <p>(Min 30% Landscaped Open Space)</p> <p>(Max 30% Hard Surface Area)</p>	<p>Waiver from minimum off-street parking requirements under M.G.L. c.40B, rather than under Table 6.02.</p> <p>(47 residential & 10 commercial parking spaces under existing bylaws)</p> <p>(39 residential & 10 commercial parking spaces under amended)</p>	<p>Parking Ratio Existing Bylaw 19/25 = 0.76 (residential)</p>	W.1 W.2
Table 6.02	Off-Street Parking Space Requirements	<p>Waiver from minimum off-street parking requirements under M.G.L. c.40B, rather than under Table 6.02.</p> <p>(4 residential & 2 commercial parking spaces under existing bylaws)</p> <p>(4 residential & 2 commercial parking spaces under amended)</p>	<p>Waiver from minimum off-street parking requirements under M.G.L. c.40B, rather than under Table 6.02.</p> <p>(4 residential & 2 commercial parking spaces under existing bylaws)</p> <p>(4 residential & 2 commercial parking spaces under amended)</p>	<p>The Development will have 19 off-street residential parking spaces and 8 off-street commercial parking spaces.</p>		

		bylaws)	bylaws)		
§6.02.2.f	Off-Street Parking Space Regulations	n/a	Waiver from required off-street parking space for visitors and tradespeople under M.G.L. c.40B, rather than under §6.02.2.f.	0 spaces	X.2
§6.04.2.e	Off-Street Parking Space Regulations	Waiver from design of off-street parking facilities requirements under M.G.L. c.40B, rather than under §6.04.2.e. (25%)	Waiver from design of off-street parking facilities requirements under M.G.L. c.40B, rather than under §6.04.2.e. (10.0%)	The Development will have 8 compact car parking spaces and 19 standard parking spaces with a percentage of approximately 29.6%.	Y.1 Y.2
§6.04.2.f	Off-Street Parking Space Regulations	Waiver from design of off-street parking facilities requirements under M.G.L. c.40B, rather than under §6.04.2.f. (not sure if it's applicable)	n/a	The Development on 49 Coolidge Street will expand the existing 3 off-street tandem parking spaces to 4 off-street tandem parking spaces, back into a public way in order to leave the property.	Z.1 Z.2
§6.04.4.c	Design of All Off-Street Parking Facilities	n/a	Waiver from design of off-street parking facilities requirements under M.G.L. c.40B, rather than under §6.04. (30 ft. curb cut)	The Development on 420 Harvard Street will have a 52 ft. curb cut.	AA.2
§6.04.5.d §6.04.5.e	Design of All Off-Street Parking Facilities	Waiver from design of off-street parking facilities requirements under M.G.L. c.40B, rather than under §6.04.5. (5 ft. setback)	Waiver from design of off-street parking facilities requirements under M.G.L. c.40B, rather than under §6.04.5. (5 ft. setback)	The Development on 49 Coolidge Street will have 4 off-street tandem parking spaces, with 0.0 ft. side yard setback and 0.0 ft. rear yard setback for the parking garage below grade.	BB.1 BB.2

					The Development on 420 Harvard Street will have 23 off-street parking spaces with 0.0 ft. side yard setback and 0.0 ft. rear yard setback for the parking garage below grade.	
§6.07	Design and Layout of Off-Street Loading Facilities	n/a	Waiver from design of off-street parking facilities requirements under M.G.L. c.40B, rather than under §6.07. (14 ft. height)		The Development on 420 Harvard Street will have 2 off-street loading spaces with 12 ft. in height.	CC.2

Exhibit 2 – JFK CROSSING 420 Harvard Street / 49 Coolidge Street Comprehensive Permit

TERMS TO BE INCLUDED IN REPLACEMENT REGULATORY AGREEMENT

1. Subsidizing Agency Regulatory Agreement. Construction and/or permanent financing for the Project will be obtained from Massachusetts Housing Partnership or another qualified subsidizing agency (the “Subsidizing Agency”). As a component of such financing, the Applicant will be entering into a regulatory agreement and other agreements with respect to the Project which, inter alia, will set forth certain restrictions as to low or moderate income housing to be provided as part of the Project as the same may be hereafter extended or amended (the “Subsidizing Agency Agreement”).

2. Regulatory Agreements. It is the intention of the Comprehensive Permit that the Project will, in perpetuity and without interruption, be subject to a suitable regulatory agreement consistent with the Comprehensive Permit governing the low or moderate income housing (the “Affordable Units”) in the Project. For so long as the Subsidizing Agency Agreements are in effect, the Subsidizing Agency Agreements satisfy in full the requirements set forth in Conditions 42 and 43 of the Comprehensive Permit for a regulatory agreement. From and immediately after the expiration or termination of the Subsidizing Agency Agreements, the Town shall enter into an agreement containing the terms of this exhibit to satisfy the requirements of Conditions 42 and 43 of the Comprehensive Permit (the “Town Regulatory Agreement”).

3. Affordability Requirements. Pursuant to the terms of Condition 34 of the Comprehensive Permit, the Applicant will restrict certain units in the Project (the “Affordable Units”) as follows: twenty percent (20%) of the units in the Project to be occupied and rented by households earning not more than fifty percent (50%) of the Area Median Income (AMI). During the Subsidy Period (as defined below), rents for the Affordable Units shall be no greater than those permitted by the Subsidizing Agency Agreements, all in accordance with the applicable rules, regulations, and guidelines of the Subsidizing Agency. Without derogating from the provisions of Paragraph 4 below relative to the exclusive jurisdiction of the Subsidizing Agency to monitor and enforce the affordability requirements, during the period (hereinafter, the “Subsidy Period”) that the Subsidizing Agency Agreements are in force and effect, the Applicant shall provide a copy to the Town, care of the Board of Selectmen, of any statements, reports, notices, or certifications made by the Applicant? to the Subsidizing Agency (or its monitoring agent) relative to the Applicant’s compliance with the affordability requirements in the Subsidizing Agency Agreements, contemporaneously with the Applicant’s delivery of the documents to the Subsidizing Agency.

From and after the Subsidy Period, the Affordable Units shall continue to be restricted as set forth in the preceding paragraph in accordance with the applicable rules, regulations, and guidelines of the Subsidizing Agency (or its successor agency) that existed prior to the expiration or termination of the Subsidizing Agency Agreements, all as though the Subsidizing Agency Agreements were still in force and effect. To the extent that the Subsidizing Agency (or its

successor agency) has ceased to promulgate such applicable rules, regulations, and policies, then the Affordable Units shall be determined based on substitute regulations of a federal or state governmental agency providing subsidies for low or moderate income housing as shall be reasonably determined by the Applicant and the Town, in order to ensure the continued availability of the Affordable Units for the purposes set forth herein and in the Comprehensive Permit for the entire term of the agreement. Further, if after the Subsidy Period, M.G.L. c.40B (or its successor statute) still provides a mandate for municipalities to provide low or moderate income housing, the Applicant agrees to continue to operate and manage the Project as would permit the Project to be credited toward the Town's Subsidized Housing Inventory for purpose of Chapter 40B.

The Board of Selectmen shall establish reasonable rules and protocols to govern the monitoring of the affordability requirements, including any reporting and notice obligations, and may designate an entity to serve as its monitoring agency to monitor the Applicant's compliance with the affordability requirements. The selection of tenants in the event of unit vacancies shall be governed by the applicable rules of the Subsidizing Agency just prior to the expiration or termination of the Subsidizing Agency Agreements, and in the absence of such rules, by the rules of another subsidizing agency that are reasonably acceptable to the Town and the Applicant.

4. Monitoring and Enforcement. During the Subsidy Period, the Subsidizing Agency shall have exclusive authority and jurisdiction for all monitoring, oversight, and enforcement functions with respect to the Affordable Units, including without limitation, provision of the Affordable Units, monitoring eligibility for tenancy, calculation of affordable rentals and all matters related to limited dividend restrictions.

From and after the Subsidy Period, the Town shall have the right to monitor the Applicant's compliance with the terms of Paragraph 3 above. The Town may retain a monitoring agent (the "Town Monitoring Agent") the reasonable fees for which shall be paid by the Applicant (as provided in Condition 43 of the Comprehensive Permit), to monitor the Applicant's compliance with requirements of the Town Regulatory Agreement. The Applicant agrees to submit to the Town Monitoring Agent all certifications in the same form, and with the same level of detail, as were made by the Applicant to the Subsidizing Agency during the Subsidy Period relative to its compliance with the provisions of Paragraph 3 above.

5. Term of Town Regulatory Agreement. The Town Regulatory Agreement and all of the covenants, agreements, and restrictions contained therein shall be deemed to be an affordable housing restriction as that term is defined in G.L. c. 184 § 31 and as that term is used in G.L. c. 184, § 26, 31, 32, and 33. The Town Regulatory Agreement shall be made for the benefit of the Town, and the Town shall be deemed to be the holder of the affordable housing restriction created thereby. The Town has determined that the acquiring of such affordable housing restriction is in the public interest. The term of the Town Regulatory Agreement, the rental restrictions, and other requirements provided therein shall remain effective for so long as the Project exists.

The Town Regulatory Agreement and the covenants, agreements, and restrictions contained herein shall be covenants running with the land, encumbering the Project for the term thereof, and shall be (i) binding upon the Applicant's successors in title, (ii) not merely personal covenants of the Applicant, and (iii) binding on the Applicant, its successors and assigns for the term thereof, and shall inure to the benefit of the parties thereto and their respective successors and assigns. Any and all requirements of the laws of the Commonwealth of Massachusetts to be satisfied in order for the provisions of the Town Regulatory Agreement to constitute restrictions and covenants running with the land shall be deemed to be satisfied in full and any requirements of privileges of estate shall also be deemed to be satisfied in full. Promptly upon the execution thereof, the Applicant shall cause the Town Regulatory Agreement to be recorded in the Norfolk Registry of Deeds (or, if the Property consists of registered land, to be filed in the Norfolk Registry District of the Land Court). The Applicant shall pay all fees and charges incurred in connection with such recording or filing.



TOWN OF BROOKLINE

BOARD OF APPEALS

Notice of Hearing

Pursuant to M.G.L., C. 40B, the Board of Appeals will conduct a public hearing at Town Hall, 333 Washington Street, Brookline, on a proposal at:

420 HARVARD ST – CONSTRUCT A 6-STORY MIXED-USE BUILDING TO INCLUDE 36 RESIDENTIAL UNITS, 2,650 SQUARE FEET OF COMMERCIAL SPACE AT THE GROUND LEVEL, AND PARKING FOR 29 VEHICLES, in an L-1.0, Local Business, zoning district, on

June 27, 2016, at 7:00 PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: 420 Harvard Associates LLC) Precinct 9

The Applicant is currently proposing to replace the existing two-story brick structure located at 40 Centre Street with a six-story building to include:

- 36 total residential units ranging from studio to three-bedroom apartments (9 affordable and 27 market rate – all rental)
- 2,650 Square feet of ground-floor commercial space
- 29 off-street parking spaces located in a surface parking area at the rear and an underground structured parking facility

The Board of Appeals will consider a Comprehensive Permit Application (M.G.L. c.40B) and associated waivers from Brookline Zoning By-Law regulations.

Hearings may be continued by the Chair to a date/time certain, with no further notice to abutters or in the TAB. Questions about hearing schedules may be directed to the Planning and Community Development Department at 617-730-2130, or by checking the Town meeting calendar at: www.brooklinema.gov.

*The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in Town programs and services may make their needs known to **Robert Sneirson, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2328; TDD (617)-730-2327; or email at rsneirson@brooklinema.gov.***

*Jesse Geller, Chair
Christopher Hussey
Jonathan Book*

Publish: June 16, 2016 & June 23, 2016